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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,558	04/19/2004	Leonard S. Schultz	6749.05	3428

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EXAMINER

PATEL, SHEFALI D

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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07/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,558

Applicant(s)

SCHULTZ, LEONARD S.

Examiner

Shefali D. Patel

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-58 and 75-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43-58 and 75-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/18/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment was filed on April 20, 2007.
2. Claims 1-42 and 59-74 stand cancelled.

Response to Arguments

3. Applicant's arguments filed on April 20, 2007 (Remarks on pages 7-16) have been fully considered but they are not persuasive.

Applicant argue on pages 7-8 regarding claim 43 stating:

“In sum, the system in Cullen simply provides for the retrieval of existing documents from a database, the retrieved documents containing similar text and/or images to that of a selected document, which may or may not include an image. See Cullen, col. 7, 1.55 - col. 8, 1. 37. Nowhere does Cullen disclose associating stored text with a new image...Thus, Cullen fails to disclose a microprocessor that compares a new image to stored images and associates with the new image any stored text associated with the one of the stored images that is most similar to the new image. As such, claim 43 is not anticipated by Cullen.”

The examiner respectfully disagrees.

Please note the processor disclosed by Cullen at col. 3 line 27. The central processor 114 in the computer system 100 which executes all of the methods described in the Cullen's invention, see col. 3 lines 24-48. Also, Cullen discloses associating stored text with a new image. As disclosed in the previous office action, col. 7 line 55 to col. 8 line 45 sums up this limitation. The applicant is right in stating that Cullen provides for the retrieval of existing documents from a database, the retrieved documents containing similar text and/or images to that of a selected (new) document, which may or may not include an image (emphasis added by the examiner). Cullen discloses associated text to the image specifically at col. 8 lines 30-36. This is where the image and text are associated with the document (which has the new image), they are later compared and ranked before displaying the results.

Art Unit: 2624

Regarding applicant's argument on claim 47 on page 8, as disclosed above in response to claim 43, Cullen discloses a microprocessor and response to the arguments are not repeated here but incorporated by reference.

With regard to claim 51 applicant argue on page 9 stating:

"Cullen does not teach or suggest the invention of claim 51. Particularly, Cullen does not disclose means for creating a record by associating with the new image the stored text associated with the identified stored image. Rather, as discussed above, the system in Cullen simply provides for the retrieval of existing documents from a database, the retrieved documents containing similar text and/or images to that of a selected document which may or may not include an image."

The examiner respectfully disagrees.

As mentioned above in response to claim 43, Cullen discloses means for creating a record by associating with the new image the stored text associated with the identified stored image. Cullen clearly discloses matching (comparing) and storing (creating a record) of the associated data at col. 8 lines 28-30.

Applicant argue on page 9 with regard to claim 56 stating:

"Particularly, Cullen does not disclose a library digital image and an outside digital image, wherein the text description associated with the library digital image most similar to the outside digital image is selected to become associated with the outside digital image to form a medical record. Rather, as discussed above, the system in Cullen simply provides for the retrieval of existing documents from a database, the retrieved documents containing similar text and/or images to that of a selected document which may or may not include an image." And, later on page 13 of the remarks in view of Prokoski.

The examiner respectfully disagrees with both arguments.

Cullen discloses a library of digital image and an outside digital image...where the text description is associated with the library digital image (i.e., database in Cullen) most similar to outside image (i.e., new image used to compare with the database of images and text). This is as same as the arguments in claim 43 except the applicant uses the word "library" which is met by the database in Cullen. Also, specific type of record (medical) is claimed. This is met by Prokoski's invention of the medical procedure. The motivation to combine these two references is same as the previous office action.

Art Unit: 2624

The applicant further argues regarding claim 75 on page 9 and 10. Please note that the arguments regarding Cullen failing to disclose “library images” are responded above in claims 43 and 56.

Finally applicant argue on page 10 with regards to claim 81 stating:

“Cullen does not teach or suggest the invention of claim 81. Particularly, Cullen does not disclose comparing a new image to stored images using digital image recognition to identify the one or more stored images that are most similar to the new image, and when the most similar one or more stored images are identified, associating with the new image the stored text associated with the identified stored image.”

The examiner disagrees.

At this point, the examiner is now being repetitive in her response to the arguments about the limitation “comparing a new image to stored images using digital image recognition to identify the one or more stored images that are most similar to the new image... associating with the new image the stored text associated with the identified stored image.”

The response is as same as claim 43 above and not repeated here.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 43-45, 47, 49-51, 53-54, 75-79 and 81-82 are rejected under 35 U.S.C. 102(e) as being rejected by Cullen et al. (hereinafter, “Cullen”) (US 6,397,213).

With regard to **claim 43** Cullen discloses a device for providing a text related to an image (Figure 2A and it's respective portions in the specification), comprising: a microprocessor (col. 3 line 27); a library of stored images (database 222); and a library of stored texts (database 222), wherein each of stored texts is associated with at least one of the stored images (col. 3lines 49 to col. 4 lines 1-65 where

Art Unit: 2624

the image is divided in the zones representing image portion and/or text portions. The text is associated with that image by having the caption or the header col. 4 lines 1-6); wherein, upon receipt of a new image, the microprocessor compares the new image to the stored images and, associated with the new image the stored text associated with the one of the stored images that is most similar to the new image (col. 7 line 55 to col. 8 lines 1-45 where for the document searching process a new image comes in and those zones are matched, associated, with the zones previously searched. Once the match is found the stored zone is associated with the new one).

With regard to **claim 44** Cullen discloses the new image, stored images and stored texts are being digital (as seen in Figures 1 and 2A the images/texts are scanned and stored as digital).

With regard to **claim 45** Cullen discloses the microprocessor uses digital image recognition to identify the one of the stored images that is most similar to the new image (col. 3 lines 24-39).

Claim 47 recites identical features as claim 43 except claim 47 is a device claim and Cullen discloses the device in Figures 1 and 2A. Thus, arguments similar to that presented above for claim 43 is equally applicable to claim 47.

Claim 49 recites identical features as claim 45. Thus, arguments similar to that presented above for claim 45 is equally applicable to claim 49.

With regard to **claim 50** Cullen discloses real-time images of the new image as seen in Figures 1 and 2A.

Claim 51 recites identical features as claim 43. Thus, arguments similar to that presented above for claim 43 is equally applicable to claim 51.

Claim 53 recites identical features as claim 44. Thus, arguments similar to that presented above for claim 44 is equally applicable to claim 53.

With regard to **claim 54** Cullen discloses means for communicating the images and texts (network interface 144, col. 3 line 33).

Art Unit: 2624

Claim 75 recites identical features as claim 43. Thus, arguments similar to that presented above for claim 43 is equally applicable to claim 75.

Claims 76 and 77 recites identical features as claim 44. Thus, arguments similar to that presented above for claim 44 is equally applicable to claims 76 and 77.

With regard to **claim 78** Cullen discloses selecting an image and the library of text by using a microprocessor as seen in Figure 1 at col. 3 lines 25-39.

Claim 79 recites identical features as claim 45. Thus, arguments similar to that presented above for claim 45 is equally applicable to claim 79.

Claim 81 recites identical features as claim 43. Thus, arguments similar to that presented above for claim 43 is equally applicable to claim 81.

Claim 82 recites identical features as claim 44. Thus, arguments similar to that presented above for claim 44 is equally applicable to claim 82.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 46, 48, 55-58, 80 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullen in view of Prokoski (US 6,529,617).

With regard to **claim 56** Cullen discloses all of the features as disclosed above in claim 43 and the arguments are not repeated herein, but are incorporated by reference. Cullen does not expressly disclose the records (or images and texts) being medical records. Prokoski discloses medical images and such throughout the invention, specifically as seen in Figure 14. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teaching of Prokoski with Cullen. The

Art Unit: 2624

motivation for doing so is to use medical images specifically rather than images of documents broadly as used in Cullen. The documents in Cullen can be any medical image that can be scanned into the system to have available both image and the related texts (for example, x-ray image with patient's name and time stamp, or an ultrasound image of a fetus with details of the fetus on it). Therefore, it would have been obvious to combine Prokoski with Cullen to obtain the invention as specified in claim 56.

With regard to **claim 57** Prokoski captures, processes and creates plurality of images as seen in Figure 14.

With regard to **claim 58** Prokoski discloses the library digital images signals and text descriptions comprising an electronically accessible database as seen in Figure 18 and its respective portions in the specification.

With regard to **claim 46** Prokoski discloses when no stored image is similar to the new image, the microprocessor generates a signal to indicate that no match has been identified for the new image (col. 16 lines 34-47).

With regard to **claim 48** Prokoski discloses the procedure a surgical procedure and the past procedures are past surgical procedures (col. 21 lines 41-50, col. 23 lines 55-57).

With regard to **claim 55** Prokoski discloses as seen in Figure 14 the images depicts aspects of medical procedures.

Claim 80 recites identical features as claim 55. Thus, arguments similar to that presented above for claim 55 is equally applicable to claim 80.

Claim 83 recites identical features as claim 46. Thus, arguments similar to that presented above for claim 46 is equally applicable to claim 83.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2624

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shefali D. Patel whose telephone number is 571-272-7396. The examiner can normally be reached on M-F 8:00am - 5:00pm (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shefali D Patel

Examiner

Art Unit 2624



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